

Office of the Executive Officer

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June 19, 2001

The Honorable Commissioner Robert Pernell

California Energy Commission

1516 Ninth Street

Sacramento, CA 95814

Subject: Application for Certification of Baldwin Energy Facility (Docket #01-EP-11)

Dear Commissioner Pernell:

I am writing to provide additional information to supplement my oral testimony at the Committee Hearing held on Monday, June 18, 2001 regarding certification of the Baldwin Energy Facility. AQMD staff has completed its preliminary evaluation (Exhibit A) of the applications for the permits to construct at the Baldwin Energy Facility pursuant to AQMD Rule 201. The evaluation concludes that the proposed Phase I project, operation without pollution control devices, may not receive an AQMD permit. Moreover, AQMD staff will not be pursuing any form of further administrative relief from the applicable federal requirement to utilize lowest achievable equipment. Since the project developer has stated it will take until March of 2002 to secure the necessary control equipment, it does not appear to AQMD staff that this project can be online by September 30, 2001 as contemplated under the Governor's Executive Order D-26-01 (subsequently revised by D-28-01).

However, relative to the configuration described as Phase II of the project, AQMD staff's analysis indicates that such energy plant will likely comply with our rules and regulations. Nonetheless, there is still one open issue with regards to the permit to construct for the plant. Specifically, Federal Clean Act Section 173(a)(5) requires an "alternatives" analysis. Relative to the Baldwin Energy Facility, we have requested guidance from U.S. EPA regarding compliance with this section of the federal clean air act as outlined in Exhibit B. We believe that U.S. EPA will be providing a response to our request within a matter of days. If it is determined that the use of CEQA in this case – which involved a statutory emergency exemption under the Governor's Order – suffices to establish compliance with the federal requirement, we are prepared to issue

a public notice regarding our intent to issue a permit to construct for the Baldwin Energy Facility "Phase II" only. If U.S. EPA determines that an alternative analysis is required, we will need to work with CEC staff to determine the appropriate scope of such analysis, prepare the documentation, and seek U.S. EPA approval.

Lastly, as mentioned in my oral testimony at the hearing, the proposed project is subject to a Title V permit under the Federal Clean Air Act. We are required to conduct a public hearing, after a 30-day public notice, prior to issuance of the Title V permit. The draft permits to construct will be ready once the issue regarding alternatives analysis is resolved and we will rapidly provide the appropriate public notice. I would appreciate the CEC staff joining us in the Title V public hearing.

When the above items are taken together, it appears that the Baldwin Energy Facility could not begin operation until some time in the first part of 2002 at the earliest. The Energy Commission needs to review whether the 21-day approval process is appropriate under these circumstances. We will continue to do everything in our power to expedite consideration of power plant projects for timely approval or disapproval, as may be appropriate. If I can be of any further assistance in this matter, or clarify any of the above information, please contact me at your earliest convenience at (909) 396-2100.

Sincerely,

Barry R. Wallerstein, D.Env.

Executive Officer

BRW/bo

Attachments

cc: Mike Kenny, California Air Resources Board

Steve Larson, California Energy Commission